**BEFORE THE**
**UNITED STATES INTERNATIONAL TRADE COMMISSION**
**WASHINGTON D.C.**

# STEEL

(INVESTIGATION NO. TA-201-73)

## POSTHEARING SUBMISSION ON REMEDY OF THE EUROPEAN COMMISSION

13 November 2001

## 1. Introduction

This post-hearing submission is filed on behalf of the Commission of the European Communities ("European Commission").

The European Commission is very concerned by the possible application of safeguard measures to imports of certain steel products ("steel") into the United States.

Following the hearings held on 6/9 November 2001 the European Commission would like to re-iterate and elaborate on some of the points which it raised in the pre-hearing submission.

## 2. Like or directly competitive product and domestic industry

The European Commission remains very concerned by the fact that interested parties have not been able to defend their essential rights in this case in particular because the domestic like product and, therefore, the corresponding domestic industries, have not been clearly defined, even by the ITC in its final injury determination.

The European Commission would like to repeat its concerns as to the effects that this lack of transparency with regard to the products and industries under investigation has on the capacity for all parties to make a meaningful contribution to this investigation.

The scope of any safeguard action is determined at the stage of the initiation of the investigation and in this case the initiation identified all the steel products concerned. However, the investigation then failed to proceed to the identification of the corresponding domestic like or competitive products and the industries for each of those products. Without early transparency on these issues it has proved impossible for the interested parties in this case to adequately defend their interests. For example, without identification of each domestic like or competitive product concerned, each of which must require a separate injury determination, no meaningful comments could be made on import trends, and on the state of domestic industries producing each of those products or on any other aspect of the case.

In fact, the product groupings developed by the ITC Commissioners in their votes on whether serious injury existed proves that there has been a serious procedural flaw in this whole investigation. Nobody could have anticipated with any precision these groupings in advance of the voting and consequently were denied due process. In any event, without specific confirmation from the ITC there is no certainty that these groupings will constitute the like or competitive products concerned in this case.

The European Commission would like to emphasise that even if the ITC does provide clarity with regard to these like products in late December it will be too little too late. It is unacceptable that parties have not been informed right from initiation about the identification of the like products and industries which are alleged to have been seriously injured by steel imports.

## 3. The investigation period

Another factor which has adversely affected the rights of the parties concerned is that the precise investigation period used by the ITC to determine injury in this case has remained

secret. This is particularly damaging in this case because the outcome of the case can almost wholly depend on the period chosen. For example, did the ITC, in arriving at its injury findings ignore the 2001 import trends. Another key question is the starting point of the investigation used by the ITC. Was it 1996, 1997, 1998 or later?

### 3. Double protection

In its various injury submissions, the European Commission has noted that the United States has a long track record of AD and CVD measures against steel imports. These measures involve many of the products included in the current safeguard investigation. Some of these cases are new AD and CVD investigations that have been initiated after the initiation of this safeguard proceeding.

The European Commission submits that, for those steel imports already covered by AD and CVD measures, the possible imposition of new restrictions in the form of safeguard measures, would mean an extra layer of protection against injury which is supposed to have been remedied by these other measures. Therefore, there is simply no appropriate and feasible action that can be recommended to the president pursuant to section 201(a) and any action would go beyond the necessity to *prevent or remedy serious injury*. A second commercial defence measure on these very same product would be clearly disproportionate and unwarranted and this factor must be addressed by the ITC.

### 4. NAFTA countries

The European Commission notes that the ITC made a separate determination on injury for Canada and Mexico. This may eventually lead to a remedy determination that excludes one or both of these countries from the imposition of measures on a number of products.

The European Commission submits that at the very least there must be symmetry between the product scope of the investigation and the product scope of any measures.

All imports have an impact on the US market. Even admitting that imports had increased and caused serious injury to the US industry, *quod non*, exclusion of certain imports from the measure would taint the whole investigation and, moreover, would undermine the effectiveness of import relief provided in a Presidential Proclamation. . For example, any imports which are excluded from measures should have been treated in the investigation proper as "other factors". Clearly, any fault in the investigation of these other factors can undermine the whole process. Moreover, an investigation which is carried out and concluded on the basis of the inclusion of all imports can also be undermined by a subsequent exclusion of certain imports, unless all factors are fully re-examined to verify the effects of such exclusion.

### 5. The remedy phase of the investigation

The European Commission considers that this lack of clarity on these issues makes it impossible to have a meaningful discussion on remedy, since this entails the ITC devising a remedy which does not go beyond what is necessary to remove the alleged injury suffered by domestic industry of each like and competitive product. Without any knowledge of what these products and industries are or how the ITC determined injury for some of them it appears impossible to contribute to this exercise.

## 6. Conclusions

**In conclusion, the European Commission firmly takes the view that the procedural flaws outlined render it inappropriate to discuss remedies in this case. Without information on the precise products which require remedy and the events which should determine the extent of such remedy the exercise cannot be properly carried in a serious way.**